IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

LUZ A. ZAMORA CAMPOS and EDGAR R. ESTRADA,	)	
Plaintiffs,	)	
v.	)	C.A. No. N19C-08-042 CLS
EDWARD L. STRANAHAN and FEDERAL MECHANICAL CONTRACTORS, INC., and ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY,	)	
Defendants.	)	

Date Submitted: February 18, 2022
Date Decided: March 16, 2022

Upon Defendant's Motion for Summary Judgment. **DENIED.**

ORDER

Brian S. Legum, Esquire, Kimmel, Carter, Roman, Peltz & O'Neill, P.A., Newark, Delaware, 19702, Attorney for Plaintiffs, Luz. A. Zamora Campos and Edgar R. Estrada.

Leslie B. Spoltore, Esquire, Obermayer Rebmann Maxwell & Hippel LLP, Wilmington, Delaware, 19801, Attorney for Defendant, Federal Mechanical Contractors, Inc.

James J. Horning, Esquire, Casarino Christman Shalk Ransom & Doss, P.A., Wilmington, Delaware, 19801, Attorney for Defendant, Edward L. Stranahan.

SCOTT, J.

This 16th day of March 2022, upon consideration of Defendant Federal Mechanical Contractors, Inc.'s ("FMC") Motion for Summary Judgment, Plaintiffs Luz A. Zamora Campos and Edgar R. Estrada's ("Plaintiffs") Response and Defendant Edward Stranahan's ("Mr. Stranahan") Response, it appears to the Court that:

1. On January 1, 2018, Mr. Stranahan, employed by FMC as a service technician, struck Plaintiffs while driving an FMC company vehicle. Mr. Stranahan is alleged to have entered onto FMC property using a security PIN number and then is alleged to have taken a company vehicle for personal use without FMC's personal knowledge or permission. Testimony from the owner of FMC establishes the accident occurred on a date FMC was closed, however, FMC still had one technician working, whom was not Mr. Stranahan. Additionally, the owner explained FMC service technicians use their specific FMC "everyday company truck" and are employed Monday – Friday from 8:00 AM to 4:30 PM. The service technicians access the work trucks by coming to FMC's primary place of business, the work trucks are left unlocked, and the lot is secured by a single gate which is unlocked at 7:00 AM and locked each night. The owner further explained that although he asserts Mr. Stranahan took the company vehicle for personal use, the truck was never

reported stolen, nor was Mr. Stranahan ever terminated or suffer an adverse employment action from the alleged incident.

2. On August 6, 2019, Plaintiffs filed a Complaint alleging claims of vicarious liability and negligent entrustment for personal injuries sustained as a result of the accident.

3. On December 21, 2021, FMC moved for Summary Judgment. On February 18, 2022, Plaintiffs and Mr. Stranahan responded in opposition.

4. FMC claims there is no dispute of material fact as to whether it is vicariously liable for Mr. Stranahan's actions or negligent in entrusting a commercial vehicle to him. FMC argues there is no evidence to suggest Mr. Stranahan's actions were in the scope of his employment, a requirement for the vicarious liability claim, because neither Plaintiffs nor Mr. Stranahan "can present a material fact demonstrating that Stranahan was (or even may have been) using the company vehicle for any interest on FMC's behalf – as no such evidence exists." Further, FMC argues neither Plaintiffs nor Mr. Stranahan can present a dispute of material fact demonstrating that Mr. Stranahan was reckless, incompetent, or unfit to operate a vehicle, a necessary element of a negligent entrustment claim.

5. In opposition, Plaintiffs argue the question of whether an employee was acting in the scope of employment is a fact specific question – and ordinarily – reserved for the jury to determine. Plaintiffs contend there is evidence of a master/servant relationship at the time of the accident, the accident occurred during regular business hours and in a geographical area Mr. Stranahan would ordinarily work. Even though the owner states the business was closed, he maintained there were still technicians working in case on an emergency and the owner's testimony suggests the vehicle was not stolen as no report was made nor was there any negative employment action against Mr. Stranahan. As for the negligent entrustment claim, Plaintiffs contend that contrary to FMC's assertion that there is nothing to suggest Mr. Stranahan was reckless, incompetent, or unfit to operate a vehicle, Mr. Stranahan was reckless in striking Plaintiffs stopped vehicle.

6. Mr. Stranahan also opposed FMC's Motion for Summary Judgment on the grounds that the motion was premature as there are unresolved issues of material fact regarding whether Mr. Stranahan was acting in the scope of his employment. The basis of Mr. Stranahan claim is centered around the owner of FMC's testimony being inconsistent and unclear regarding whether Mr. Stranahan was in the scope of his employment.

7. The Court may grant summary judgment if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law."[1] The moving party bears the initial burden of showing that no material issues of fact are present.[2] Once such a showing is made, the burden shifts to the non-moving party to demonstrate that there are material issues of fact in dispute.[3] In considering a motion for summary judgment, the Court must view the record in a light most favorable to the non-moving party.[4] The Court will not grant summary judgment if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law.[5]

8. FMC claim Plaintiffs' case fails because Plaintiffs' nor Mr. Stranahan have not demonstrated Mr. Stranahan acted in the scope of employment when the accident occurred and have not demonstrated Mr. Stranahan was reckless or incompetent driver. The Court disagrees with the FMC's arguments. In viewing the evidence in a light most favorable to Plaintiffs, there are genuine

[1] Super. Ct. Civ. R. 56(c); *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991).
[2] *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).
[3] *Id.* at 681.
[4] *Burkhart*, 602 A.2d at 59.
[5] *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962); *Phillip-Postle v. BJ Prods., Inc.*, 2006 WL 1720073, at *1 (Del. Super. Ct. Apr. 26, 2006).

issue of fact as to whether Mr. Stranahan was acting in the scope of his employment and whether he was reckless.

9. As stated above, Mr. Stranahan is alleged to have taken a company car without permission and to have used it for personal use. However, the testimony of FMC's owner does not fully establish those facts to be true. There are inconsistencies in FMC's owner's testimony regarding the circumstances Mr. Stranahan gained access to the vehicle. For example, FMC's owner explained technicians work Monday – Friday 8:00 AM – 4:30 PM, however, on the date of the accident the company was closed for service. Except there was a technician on duty in case of emergency, whom presumable had access his or her company car like any other day. In addition, FMC's owner claimed the work truck was taken without permission but admitted the work trucks are not locked, are not secured during business hours, never reported the work truck stolen to the police nor reprimanded Mr. Stranahan for his alleged theft.

10. In addition to this Court finding there are genuine disputes of material fact for the vicarious liability claim, the Delaware Supreme Court has held a question of whether an actor's conduct was in the scope of employment is

ordinarily a question of fact for the jury[6] and a question of whether an actor's conduct was wanton or reckless is a question of fact for the jury.[7] Based on the testimony and evidence relied upon for the Motion for Summary Judgment, a jury could reasonably find Mr. Stranahan acted within the scope of his employment and/or FMC negligently entrusted Mr. Stranahan with its work vehicle, so Summary Judgment is improper. For the foregoing reasons, Defendant's Motion for Summary Judgment is **DENIED.**

IT IS SO ORDERED.

/s/ Calvin L. Scott
Judge Calvin L. Scott, Jr.

[6] *Hecksher v. Fairwinds Baptist Church, Inc.*, 115 A.3d 1187, 1200 (Del. 2015) (quoting *Doe v. State*, 76 A.3d 774, 776 (Del. 2013)).
[7] *Green v. Millsboro Fire Co., Inc.*, 403 A.2d at 290 (Del. 1979). See also *Wilson v. Tweed*, 209 A.2d 899, 901 (Del. 1965).